

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

GERARD DECKER,

No. 09-10655

Debtor(s).

Memorandum on Motion to Surcharge Debtor's Exemptions

The court declines to surcharge the debtor's exemptions for actions voluntarily taken by the Trustee, such as waiting for an offer that was supposedly forthcoming; the Trustee could have set time limits. Likewise, the court declines to surcharge exemptions for legal actions, such as requesting a hearing. Unless the action rises to the level of a Rule 11 violation, it would not be appropriate to surcharge an exemption.

Just as postpetition appreciation belongs to the estate, postpetition expenses must be borne by the estate. The Trustee cannot expect the debtor to bear them, especially where the Trustee voluntarily delayed liquidation of the estate.

The court would surcharge the debtor for the expense incurred by the estate enforcing an order the debtor violated. However, the declaration in support of the motion does not clearly establish that there was a violation of an order or how much in attorneys' fees were incurred by the estate in enforcing (as opposed to obtaining) the order.

For the foregoing reasons, the motion will be denied without prejudice. Counsel for the debtor shall submit an appropriate form of order.

Dated: May 10, 2010


Alan Jaroslovsky
U.S. Bankruptcy Judge